

Decision 04-04-044 April 22, 2004

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Joint Application of Lightyear Communications, Inc (U-5359-C), Lightyear Telecommunications LLC (U-5671-C), and Lightyear Network Solutions, LLC For Grant of Authority Pursuant to Public Utilities Code Section 851 Necessary to Consummate a Transfer of Assets.

Application 04-01-003  
(Filed January 2, 2004)

**OPINION GRANTING APPLICATION  
TO TRANSFER CONTROL**

**Summary**

Lightyear Communications, Inc. (U-5359-C) (Lightyear), Lightyear Telecommunications LLC (U-5671-C) (LLC) (collectively, Lightyear Companies), along with Lightyear Network Solutions, LLC (New Lightyear; collectively with Lightyear Companies, Applicants), seek authorization pursuant to Pub. Util. Code § 851 to enter into transactions to allow the Lightyear Companies to emerge from bankruptcy. We approve the application.

**Jurisdiction**

Applicants filed this matter pursuant to Pub. Util. Code § 851 *et seq.*, which requires a public utility to obtain Commission authorization before it "may sell, lease, assign or otherwise dispose of ... property necessary or useful in the performance of its duties to the public." Section 854 precludes any person or corporation from transferring control of any public utility organized and doing business in California without first securing authorization to do so from the

Commission upon a finding that the transfer is in the public interest. The purpose of these related sections is to enable the Commission, before any transfer of public utility property is consummated, to review the situation and to take such action as the public interest may require. (*San Jose Water Co.* 10 CRC 56 (1916).)

### **Description of the Parties and Transaction**

New Lightyear is a newly created Kentucky limited liability company located at 1901 Eastpoint Parkway, Louisville, Kentucky 40223. New Lightyear is a wholly owned subsidiary of LY Acquisition LLC, a Kentucky limited liability company to be located at the same address. Lightyear is a privately held Kentucky corporation located at the same address, and is a wholly owned subsidiary of Lightyear Holdings, Inc., a privately held corporation. LLC is a privately held Kentucky limited liability company, located at the same address. It too is a wholly owned subsidiary of Lightyear Holdings.

We authorized Lightyear to provide telecommunications services in California as a non-dominant interexchange company (NDIEC) on February 14, 1994 under the utility identification number U-5359-C. In Decision 01-02-020, we granted Lightyear authority to operate as a facilities-based provider of local exchange services as a competitive local exchange carrier (CLEC) in the service territories of Pacific Bell and Verizon California Inc. In California, Lightyear currently has approximately 16,000 customers.

We authorized LLC to provide NDIEC services in California on July 16, 1997 under the utility identification number U-5671-C. LLC currently has no California customers.

Since April 29, 2002, the Lightyear Companies have been in bankruptcy proceedings in the Western District of Kentucky. The transaction described below will allow a reorganization of the Lightyear Companies by transferring

substantially all of their assets to New Lightyear, under the control of a new set of investors.

The Kentucky Bankruptcy Court approved an asset sale on October 28, 2003 whereby Acquisition agreed to purchase the Lightyear Companies for \$33.5 million in cash and debt assumption. After the transfer of assets, New Lightyear will operate as a certificated carrier in California, and will provide telecommunications service to all current Lightyear and LLC customers. Current customers of the Lightyear Companies will continue to receive service under the same rates, terms and conditions that currently apply to their services.

Acquisition will also receive a bank loan of approximately \$14 million, secured by a guarantee of the assets of New Lightyear.

Applicants do not expect the proposed transaction to materially change the Lightyear Companies' current management team.

Applicants state that the transaction services the public interest because New Lightyear holds the managerial, technical and financial qualifications to acquire the assets of the Lightyear Companies; the change will allow Lightyear to resume its status as an effective competitor in California; and the transaction will ensure that the Lightyear Companies' customers experience no disruption in service.

## **Discussion**

Where a company acquiring control of a certificated telecommunications carrier does not possess a Certificate of Public Convenience and Necessity (CPCN), the Commission applies the same requirements as to an applicant seeking a CPCN to exercise the type of authority held by the company being acquired: in this situation, that requires a minimum of \$ 100,000 in cash or cash equivalent, and technical expertise in telecommunications or a related business. Review of the documents submitted in support of Applicants' financial qualifications indicates that they will have sufficient resources to meet

Commission requirements. Applicants state that the transaction will not materially change the management team, and a review of the management biographies reveals ample telecommunications experience.

It appears that no affiliate, officer, director, partner, or owner of more than 10% of any Applicant entity, or any person acting in that capacity, has filed for bankruptcy (other than as disclosed in the application) or been sanctioned by the Federal Communications Commission or any state regulatory commission for failure to comply with any regulatory statute, rule or order; and no such person has been found criminally or civilly liable for a violation of § 17000 et seq. of the California Business and Professions Code or for any actions that involved misrepresentations to consumers, or is currently under investigation for similar violations. The only formal complaints against any Applicant entity consisted of one complaint in Oklahoma and one in Nebraska. Both involved an authorized carrier transfer caused by a so-called “fat finger” data entry error. The Lightyear Companies agreed to a \$1,000 fine in the Oklahoma case and to a \$2,000 fine in the Nebraska case. We do not find that these cases disqualify any Applicant from receiving approval of the current application. Thus, Applicants satisfy the Commission's requirements on these factors.

In all, the proposed transaction will benefit the public interest by resulting in a better-financed, more viable competitive provider of local and interexchange telecommunications services.

This application proposes no new construction. Accordingly, there is no possibility that the proposed transaction contemplated herein may have any significant impact on the environment. There are no protests to this application. Applicants' request is granted.

### **Comments**

This is an uncontested matter in which the decision grants the relief requested. Applicants have requested expedited approval. Accordingly, pursuant to § 311(g)(2) of the Pub. Util. Code, the otherwise applicable 30-day period for public review and comment is being waived.

### **Assignment of Proceeding**

Geoffrey F. Brown is the Assigned Commissioner and Sarah R. Thomas is the assigned Administrative Law Judge in this proceeding.

### **Findings of Facts**

1. New Lightyear has sufficient financial resources to meet the Commission's requirements to operate as a provider NDIEC and CLEC services in the state.

2. Given Applicants' stated intention to make no material changes in the current managerial team of the Lightyear Companies, New Lightyear will possess the necessary technical expertise required by the Commission.

3. It appears that no affiliate, officer, director, partner, or owner of more than 10% of any Applicant entity, or any person acting in that capacity, has filed for bankruptcy during their association or tenure with the company, other than the bankruptcy disclosed in the application.

4. Applicants have no complaints alleging fraud or significant wrongdoing pending against them before this Commission, the Federal Communications Commission or any other state Commission, and the cases in which Applicants paid fines do not militate against approval of this application.

5. No new construction is being proposed in this application.

### **Conclusions of Law**

1. The proposed transfer of control of the Lightyear Companies to New Lightyear is in the public interest.

2. It can be seen with certainty that the proposed transfer will not have any adverse impact on the environment.

3. New Lightyear meets the Commission's requirements for acquiring a company providing CLEC and NDIEC services.

4. The application should be approved pursuant to §§ 851 and 854(a) of the Pub. Util. Code; since the matter is uncontested, the decision should be effective on the date it is signed.

## **O R D E R**

### **IT IS ORDERED** that:

1. Lightyear Communications, Inc. (U-5359-C) (Lightyear), Lightyear Telecommunications LLC (U-5671-C) (LLC) (collectively, Lightyear Companies), along with Lightyear Network Solutions, LLC (New Lightyear; collectively with Lightyear Companies, Applicants), are authorized, pursuant to California Pub. Util. Code §§ 851 and 854(a), to transfer control of the Lightyear Companies to New Lightyear in accordance with the transactions described in Application (A.) 04-01-003.

2. Lightyear and New Lightyear shall notify the Director of the Commission's Telecommunications Division in writing of the transfer of control authorized herein, within 10 days of the later of either the date of consummation of such transfer, or the date of the signing of this order.

3. The application is granted as set forth above and the authority granted shall expire if not exercised within one year after the effective date of this order.

4. A.04-01-003 is closed.

This order is effective today.

Dated April 22, 2004, at San Francisco, California.

MICHAEL R. PEEVEY

President

CARL W. WOOD

LORETTA M. LYNCH

GEOFFREY F. BROWN

SUSAN P. KENNEDY

Commissioners